Supreme Court, U.S.
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No. 86-1197

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1986

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**SHEELA A. GIDEON,**
*Petitioner,*

*vs.*

**RIVERSIDE COMMUNITY COLLEGE DISTRICT,**
*Respondent.*

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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## OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Whether the Ninth Circuit Court of Appeals committed reversible error in affirming the District Court's finding that disparate impact was not an issue at trial;

2. Whether the Ninth Circuit Court of Appeals committed reversible error in affirming the District Court's finding that Petitioner was not subject to intentional discrimination by Respondent;

3. Whether the Ninth Circuit Court of Appeals committed reversible error in affirming the District Court's decision to admit evidence of prior and subsequent employment records, reports, memorandum and other negative evidence of Petitioner, for use only in connection with the issue of the appropriate remedy;

4. Whether the Ninth Circuit Court of Appeals committed reversible error in affirming the District Court's decision to exclude evidence of investigative reports of the Equal Employment Opportunity Commission and of the California Department of Fair Employment and Housing Commission.

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TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA:

Respondent, Riverside Community College District, opposes Petitioner's petition for writ of certiorari on the grounds that there are no special and important reasons presented which require the Court to exercise its discretion to hear this case. Contrary to the requirements of Supreme Court Rule 17, Petitioner has failed to demonstrate how this case involves special and important issues which would merit the Court to grant a writ of certiorari. Indeed, in essence, Petitioner has simply restated her appellate

argument to the Ninth Circuit Court of Appeals. The Petition should thus be denied.

## I

## STATUTES INVOLVED

The statute which the case involves is Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* Because of the length of the statute, it will be set forth later, if necessary, in the Appendix to Respondent's Brief, pursuant to Supreme Court Rule 34.1(f).

## II

## STATEMENT OF THE CASE

Pursuant to Supreme Court Rules 22.1 and 34.2, Respondent adds to Petitioner's Statement of the Case that the Ninth Circuit Court of Appeals affirmed the decision of the District Court on September 15, 1986.

## III

## STATEMENT OF THE FACTS

### A. Selection Process Utilized by Riverside Community College District

Riverside Community College District utilizes a formal, structured procedure in hiring full-time, non-substitute employees. In 1975 the District adopted an Affirmative Action Policy which sets forth this procedure. The policy was subsequently revised in February 1977 and April 1980.

Briefly, the hiring process requires the following:

1. Applicants are initially screened to determine which candidates will be invited for an interview. The Screening Committee consists of the Dean of Academic Services, Division Chairperson and a minimum of two or three tenured members of the division, and at least one female and one ethnic minority member.

2. A select number of candidates, as a result of the initial screening, are interviewed by the Screening Committee. The Screening Committee selects two or three candidates to be interviewed by the Superintendent.

3. The Superintendent interviews the two or three recommended candidates, makes a choice, informs the Dean of Academic Services of his choice, extends an offer of employment to the successful candidate contingent upon Board approval and submits the recommendation to the Board of Trustees.

To further ensure a non-biased process, the Selection Committees observe the following guidelines: The initial paper screening is done on an individual basis by each committee member. Each member is provided with a copy of the job announcement which includes the requirements for the position. The member must determine whether an individual applicant meets those requirements. Each Committee member then evaluates each applicant in writing on a candidate screening form.

Not all applicants who meet the paper screening requirements are interviewed. Likewise, an applicant who may be questionable as to a particular requirement may be interviewed. That is, the Committee looks at the applicant's qualifications as a whole in terms of that individual's suitability for a particular position.

The members of the Committee who are from the particular instructional division, in this case Nursing, submit questions which they believe would evaluate an interviewee's qualifications for the position. The questions are typically discussed and modified and the final questions are typed on the interview sheets.

Each Committee member has an interview evaluation sheet with him or her during the interviews. The evaluation contains the questions to be asked with a grading section after each one and room for comments. The grading section typically contains areas to check superior, above average, average, below average and unsatisfactory. At the end of the interview sheet is a section to grade personal characteristics, education and employment.

Prior to the interviews, the Committee Chair, usually the Dean of Academic Services, assigns one or two questions to each Selection Committee member. That person asks the same question of each candidate. During the interview each candidate is asked the same questions and each candidate is interviewed for the same amount of time.

Each member of the Selection Committee fills out his/her evaluation of the candidate's answer to each particular question during the interview. Following the candidate's interview, the Committee member fills out the last page of the interview evaluation. The Committee members do not discuss their grading of the candidates while they are in the process of completing each candidate's interview evaluation. The Committee members do not look at each other's evaluations while they are grading the individual candidates.

After all of the interviews are completed the Committee members discuss who they will choose for the Superintendent to interview. They reach a consensus on the two or

three candidates to be interviewed by the Superintendent based upon their individual interview evaluations and a collective decision.

The two or three candidates who are sent to the Superintendent to be interviewed are not ranked in order of preference by the Selection Committee. The Superintendent chooses which candidate should ultimately be hired based upon his evaluation of the candidate.

Contrary to the formal structure utilized in hiring full-time non-substitute instructors, no corresponding process is used in hiring part-time or temporary employees. The fact that an individual previously worked part-time or as a temporary instructor for the District does not guarantee that person a full-time position when he or she applies for such a position.

### B. Gideon's Employment History With Riverside Community College District

Gideon applied for a community college instructor credential on January 31, 1975. She received a temporary teaching certificate that same date. On June 30, 1975 the Board of Governors of the California Community Colleges provided Gideon a lifetime community college instructor credential in the subject area of nursing issued effective January 31, 1975.

Gideon worked as a daytime hourly employee from February 3 through March 28, 1975 during the Spring 1975 semester at Riverside Community College District.

On August 4, 1976 the Board of Trustees of the District appointed Gideon as a long term temporary substitute for Marie Donaldson from September 13, 1976 to continue until Ms. Donaldson was permitted by her physician to

resume her duties. Ms. Donaldson did not return during that year. Gideon consequently served as a long-term temporary substitute for the entire 1976-77 academic year.

During the Summer of 1977, Gideon taught in the Vocational Nursing Program.

In the Fall of 1977 Gideon was employed as a part-time casual employee from September 13 through October 7 and November 8 through December 1.

### C. 1977 Nursing Instructor Permanent Full-Time Position

In the Summer of 1977, the District announced the opening of a Nursing Instructor position. The academic qualifications were (1) Master's degree in nursing; (2) valid California Community College credential; (3) current license as registered nurse in California. The announcement also stated "Previous teaching experience at the community college level is desirable as is some practicable experience in hospital work."

Several individuals applied for the position. Gideon, Helen Strutz, Ruth Sanders, Patricia Hora and Thera Sass were selected by the Selection Committee for an interview. The Selection Committee was comprised of the Associate Dean of Academic Services, James Duncan, the Interim Director of Nursing, Dorothy Steck, and two Associate Professors of Nursing, Phyllis Rojackovick and Thelma Cary. Ms. Cary and Ms. Rojackovick represented the two tenured members of the division. In addition, Ms. Cary, who is Black, represented the ethnic minority members of the college community.

Gideon and Helen Strutz were not recommended to be interviewed by Foster Davidoff, the Superintendent at the

time. The decision not to recommend Gideon and Ms. Strutz for an interview by the College President was made by the Interview Committee as a whole and not by an individual member.

Gideon received 1 Unsatisfactory; 14 Below Averages; 3 Below Average-Averages; 8 Averages; 1 Average-Above Average; 4 Above Averages; and 1 Above Average-Superior from the Selection Committee members on her interview sheets. Each member of the Committee rated her "weak" in the area of language. Each Committee member commented in writing on the interview sheet that he/she had difficulty understanding her.

Language was not the only weakness in Gideon's interview. She was also evaluated as disorganized and the substance of many of her answers were not as good as some of the other candidates.

Helen Strutz had taught previously at Riverside Community College District as a part-time instructor beginning in 1974. She had several letters of recommendation in her application packet.

Ms. Strutz received 1 Unsatisfactory; 2 Below Average-Unsatisfactory; 11 Below Averages; 3 Below Average-Averages; 9 Averages; 6 Above Averages.

The Selection Committee determined that Patricia Hora, Ruth Sanders and Thera Sass were the candidates best qualified to be interviewed by the Superintendent.

Ms. Hora received very high ratings from the Selection Committee. Patricia Hora received 8 Superiors, 21 Above Averages and 3 Averages from the Selection Committee members on her interview sheets. Mr. Duncan testified that he recommended her as a final candidate because he believed that she was a strong teaching prospect on the basis of her experience, academic achievements, maturity,

interests and enthusiasm. He also stated that she expressed a commitment to the field of nursing. Similarly, Ms. Steck testified that she recommended Ms. Hora as a final candidate because she was outstanding in each of her responses, and on the basis of her academic background and her enthusiasm.

Superintendent Davidoff interviewed Ruth Sanders and Patricia Hora. He selected Patricia Hora for the position despite the fact that Ruth Sanders had previously taught at Riverside Community College District as a part-time instructor and had several recommendations. Mr. Davidoff testified that Ms. Hora clearly was the best qualified candidate on the basis of the way she came across in her interview, her qualifications and her philosophy of education.

While Ms. Hora had no paid teaching experience, she taught Bachelor of Science students in Community Health Nursing. She had also done some volunteer teaching. Additionally, she had a considerable amount of practical nursing experience.

Ms. Hora applied for her Community College Teaching Credential on July 22, 1977, and was issued a Temporary Teaching Certificate that same date. The Board of Governors of the California Community Colleges provided Ms. Hora with her Life Community College Instructor Credential on September 23, 1977, issued July 22, 1977.

On July 3, 1978, Gideon filed a Petition for Writ of Mandate against Riverside Community College District and Foster Davidoff, President of the Riverside Community College District, in the Superior Court of the State of California of the County of Riverside. She contended that the interview panel was not properly constituted and one of the members discriminated against her. She

requested that the teaching position for which Patricia Hora was accepted be declared vacant and that new interviews be conducted.

The District filed an Answer, a Memorandum of Points and Authorities in Opposition to the Petition and a Declaration of Foster Davidoff. On August 2, 1978 the Court denied Gideon's Petition for Writ of Mandate. Judgment was entered on September 15, 1978.

Gideon filed a charge of National Origin Discrimination with the Fair Employment and Housing Practice Commission on October 13, 1977.

### D. Reduction of Part-Time Employee Instructors For Spring, 1978

On December 27, 1977, Mary Fiorentino, Director of Nursing at Riverside Community College District, wrote a letter to Sheela Gideon and other part-time nursing instructors informing them that the Nursing Division would not be requiring their services because it was reducing the number of part-time instructors. In that letter, Ms. Fiorentino explained that as a result of accreditation visits the Nursing Division was reducing the number of students that it had traditionally accepted into the Registered Nursing Program.

Dr. Larsen testified that since the Nursing Program lacked National League of Nursing accreditation in 1977 it was no longer able to use the military hospital. Consequently, it had to reduce the number of nursing students and correspondingly the number of hourly nursing instructors.

The Division eliminated all evening college laboratory hours, shortened the Licensed Vocational clinical hours and

combined classes. Consequently, the Division needed less instructors. The Director determined that the Division should utilize the full-time faculty to its fullest and provide continuity and cohesiveness to the instructional program.

On January 5, 1978, Gideon met with Dr. Larsen and requested that he inform the Director of Nursing of the successful work and service she had provided to the College in past semesters as a part-time hourly employee or as a substitute employee. Dr. Larsen informed her that there had been a reduction in force and that a decision had been made to more fully utilize full-time faculty in clinical experiences. He also told her that there would be a further reduction in reliance on part-time faculty in the Nursing Division because of proposed changes in the curriculum. Nevertheless, Dr. Larsen requested Ms. Fiorentino to examine Ms. Gideon's competencies and determine whether her skills would permit her future employment if opportunities existed.

The Nursing Division records reflect that the number of part-time nursing instructors was reduced from the Fall Semester 1977 and the Spring Semester 1978. The faculty listed as part-time staff in the Registered Nursing Annual Report in October 1977 were Marie Colucci, Sharon Evans, Sheela Gideon, Maureen Kane, Ruth Sanders and Doris Sewer. That same Report listed only Marie Colucci and Maureen Kane as part-time faculty in March 1978.

### E. 1978 Nursing Instructor Positions

The District announced three full-time Nursing Instructor positions in July, 1978. Gideon applied for all three positions, as did Helen Strutz and Ruth Sanders.

The District decided not to fill the full-time temporary position which it had advertised. The District determined that it would not replace the temporary position. Instead, it used hourly employees to fill the position.

Gideon was not interviewed for either of the two remaining positions. Selection Committee members evaluated her as not meeting job criteria.

Dr. Larsen was Chairman of the 1978 Selection Committees. He testified that he did not tell any of the members of the 1978 Selection Committees that Gideon had filed a discrimination complaint. He further testified that the fact she had filed a complaint did not enter into his assessment of Gideon. He also stated that Gideon was not interviewed in 1978 because her overall credentials and qualifications were not as strong as those who were invited for interviews.

Chiyo Sasaki, Associate Professor of Nursing for Medical-Surgical and Nursing III served on one of the 1978 Selection Committees. Ms. Sasaki testified that no one told her that Gideon filed a discrimination complaint prior to or at any time during the 1978 selection process. She testified that she was unaware of the fact that Gideon filed a complaint during that process.

Ms. Sasaki also testified that Gideon was not interviewed because she was not considered to be one of the best qualified applicants. Ms. Sasaki rated Gideon as not meeting the criteria in two out of four categories on her candidate screening form.

Ruth Sanders was also not interviewed for either of the 1978 positions. She, too, had worked previously at Riverside Community College District. She worked part-time at the District during the Fall of 1976, Spring of 1977 and Fall of 1977. She also had several letters of recommendation.

Sharon Evans was hired for the Vocational Nursing Instructor position. Ms. Evans was previously the Assistant Director of Nursing Education at Riverside General Hospital, the Director of Nursing at Knollwood Community Hospital, part-time instructor at Riverside City College during the Fall 1977 semester, and Inservice Instructor at Knollwood Community Hospital. In addition, she had several other types of employment experience that were pertinent.

Diana Hays was hired for the other full-time Nursing instructor position in 1978. That position was advertised as ". . .lecture and laboratory instruction in nursing courses with emphasis on senior medical-surgical nursing including ICU, CCU, team leadership and research seminars."

Ms. Hays' background includes the following experiences among others: staff nurse in renal and CCU areas at Mount Sinai Division of Cedars-Sinai Medical Center; Administrative Supervisor in Critical Care at Mount Sinai Division of Cedars-Sinai Medical Center; Instructor in Medical-Surgical and Team Nursing at Hollywood Presbyterian School of Nursing; Part-time instructor in Medical-Surgical and Critical Care Nursing at California State University, Los Angeles; Instructor in Medical-Surgical at Santa Ana College; Instructor in Medical-Surgical at Cerritos College and Cypress College.

### F. 1979 Nursing Instructor Position

The District announced a full-time permanent Nursing Instructor position in May, 1979. The position description stated in relevant part, "Responsible for lecture and laboratory instruction in nursing courses with emphasis on psychiatric nursing. A combined background of psychiatric

and pediatric nursing theory and experience is preferred but will not exclude an applicant with a strong psychiatric background."

Gideon, Helen Strutz and Tim Matthews were selected to be interviewed for the 1979 position. Gideon received mixed interview evaluations. She was rated Below Average on several questions. Three of the five Committee members commented that she was difficult to understand.

Dr. Larsen was the Chairman of the 1979 Selection Committee. He testified that he did not tell the members of the committee that Gideon had filed a discrimination complaint. He also testified that the fact that Gideon had filed a complaint did not enter into his assessment of her prior to, during, or after her interview.

Diana Hays, a previous District nursing instructor, served on the 1979 Selection Committee. Ms. Hays testified that no one told her that Gideon filed a discrimination complaint prior to or during the 1979 selection process. She testified that she was not aware that Gideon filed a complaint at any time prior to or during the selection process. Ms. Hays further testified that Gideon was very difficult to understand in her interview and that her answers were very disorganized.

Helen Strutz was also not hired for the 1979 position. She had previously worked at Riverside Community College as a Nursing Instructor and had received several letters of recommendation. Ms. Strutz had also applied for the 1977 position and all three 1978 positions. She was not hired for any full-time teaching position at Riverside Community College District.

Tim Matthews was hired for the 1979 position. His background included serving as a Psychiatric Nurse Instructor and Assistant to the Director of Nursing

Education for the Commonwealth of Pennsylvania Department of Public Welfare at Dixmont State Hospital; Psychiatric Coordinator and Clinical Instructor and Coordinator of the Rehabilitation Program at Sewickley Valley Hospital of Nursing. Both Dr. Larsen and Ms. Hays testified that Mr. Matthews was by far the best candidate in 1979.

### G. 1981 Nursing Instructor Full-Time Position

Gideon applied for the 1981 Nursing Instructor Full-Time Permanent position. The job announcement stated in addition to other requirements, "Two years experience teaching in a state accredited, associate in arts/science degree nursing program within the last five years is required." Several committee members rated Gideon as not meeting that requirement and she was consequently not chosen to be interviewed.

## IV

## ARGUMENT

### Petitioner Has Failed To Allege The Existence Of Any "Special and Important Reasons" Why The Court Should Grant Her Petition Pursuant To Supreme Court Rule 17 And Thus, Her Petition Should Be Denied

Petitioner has improperly assumed that the Court naturally hears all cases that are presented. Instead of filing a petition for writ of certiorari which describes the special and important reasons why the Court should grant her petition, Petitioner, with a few exceptions, has merely

resubmitted her unsuccessful brief to the Ninth Circuit Court of Appeals. Petitioner has, in other words, submitted a brief on the merits pursuant to Supreme Court Rule 34, not a petition for writ of certiorari according to Rule 21.

As to Petitioner's "new" substantive arguments on the merits attacking the decision of the Ninth Circuit, not a single case is cited to indicate how that court erred in affirming the decision of the trial court. Furthermore, Petitioner fails to indicate whether or how the Ninth Circuit (1) "rendered a decision in conflict with the decision of another federal court of appeals on the same matter;" (2) "decided a federal question in a way in conflict with a state court of last resort;" (3) "so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision;" (4) "decided an important question of federal law which has not been, but should be, settled by this Court;" or (5) "decided a federal question in a way in conflict with applicable decisions." Supreme Court Rule 17.

The Court should not be required to search Petitioner's petition in order to find a weighty reason why a writ of certiorari should be granted. Likewise, Respondent cannot properly oppose a petition by "disclosing any matter or ground why the cause should not be reviewed by this Court" if Petitioner has not argued why the cause should be reviewed by the Court. Indeed, a review of Petitioner's transposed Court of Appeals questions for review will indicate that Petitioner is asking this Court simply to re-evaluate previously made factual and evidentiary determinations. Nothing in the petition raises new, special and important issues. Petitioner has thus failed to demonstrate that this case represents anything other than a petition filed

by a dissatisfied litigant. Such a reason is not the basis for Supreme Court review; the Court should not consider a brief on the merits prior to a decision to grant the petition.

## V

## CONCLUSION

Petitioner's petition for writ of certiorari should be denied on the grounds that she has failed to present any argument as to the existence of any special and important reasons justifying the Court's review. The discretionary nature of certiorari, and the manifest impossibility of granting review whenever a Petitioner claims that the lower courts erred together warrant the result sought.

Date: February 12, 1987

Respectfully submitted,

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